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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/795,813	03/08/2004	Donald House	F283	2767

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COLLEN IP
THE HOLYOKE MANHATTAN BUILDING
80 SOUTH HIGHLAND AVENUE
OSSINING, NY 10562

EXAMINER

GROSSO, HARRY A

ART UNIT	PAPER NUMBER
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3781

DATE MAILED: 11/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/795,813

Applicant(s)

HOUSE ET AL.

Examiner

Harry A. Grosso

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) 22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 3/8/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-21, drawn to a pail assembly and lid assembly, classified in class 206, subclass 514.
- II. Claim 22, drawn to a method of using the pail assembly, classified in class 53, subclass 285+.

Inventions of Group I and Group II are related as product and process of use.

The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product. See MPEP § 806.05(h). In the instant case the product can be used empty as a weight to hold down materials or the product can be used for temporary storage of the one or multiple materials that do not require sealing of the containers.

Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.

During a telephone conversation with Mr. Donald Ranft on October 23, 2006 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-21. Affirmation of this election must be made by applicant in replying to this

Office action. Claim 22 is withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the plurality of detents to engage said bead (claims 11 and 21) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 21 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter that was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The plurality of detents on the external lid to engage the bead on the protruding portion is not described in the specification and it is unclear what is intended.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 21 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The plurality of detents on the external lid to engage the bead on the protruding portion is not described in the specification and it is unclear what is intended.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

1. Claims 1, 7, 9-13 and 15 are rejected under 35 U.S.C. 102(a and e) as being anticipated by DeCola et al (6,648,164) (DeCola).
2. Regarding claim 1, DeCola discloses a pail assembly with a pail (20, Figures 2 and 3), a container for a second product (5), a lid assembly (30) with a receptacle to contain and support the container and a closure member to enclose the first product (39) and a lid for closing the container in the receptacle (60).
3. Regarding claim 7, the receptacle is tapered.
4. Regarding claims 9 and 10, DeCola discloses a pail (20) a container (5), a means for closing the pail that is a lid and includes a receptacle (30) and a means for closing the container in the receptacle (60).
5. Regarding claim 11, the means for engaging comprises an annular bead (38) and the means for enclosing is a lid with a plurality of detents (66, Figure 6).
6. Regarding claims 12 and 13, DeCola discloses the pail can be made of metal or plastic (column 20, lines 9-13).
7. Regarding claim 15, DeCola discloses the means for closing the pail (30) is plastic (column 3, lines 14-26).

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8. Claims 1, 4, 7, 9 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Barnes et al (5,674,546) (Barnes).

9. Regarding claim 1, Barnes discloses a pail assembly with a pail (20, Figures 1-5), a container for a second product (40, 50, Figures 4 and 5), a lid assembly (10) with a receptacle to contain and support the container and a closure member to enclose the first product (15) and a lid for closing the container in the receptacle (44).

10. Regarding claim 4, Barnes discloses a sealed bag (50, Figure 5, column 6, lines 64-66).

11. Regarding claim 7, the receptacle is tapered.

12. Regarding claims 9 and 10, Barnes discloses a pail (20) a container (40, 50), a means for closing the pail that is a lid and includes a receptacle (10) and a means for closing the container in the receptacle (44).

13. Claims 16 and 18-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Wanderer (3,349,941).

14. Regarding claim 16, Wanderer discloses a lid assembly (14, Figure 1) with a first planar portion (68, Figure 3), an outer flange portion (52) that extends in first direction at an angle and the flange portion has a means of attaching to the pail (12) through the groove (48) formed by the flange and the inner groove wall, a receptacle formed in the first direction below the planar portion, a protruding portion extending upward from the planar portion (70, 72, 76, 78, 80, Figure 30) and an external lid (16) with means (66) for attaching the lid to the protruding portion.

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15. Regarding claim 18, Wanderer discloses the lid is made of plastic (column 2, lines 27-31).

16. Regarding claim 19, the receptacle is in the shape of a tapered cylinder in that the receptacle is generally cylindrical and is smaller at the base than at the open end formed by the planar portion (Figure 4).

17. Regarding claim 20, the outer flanged portion is flared outward (Figures 3 and 4).

18. Regarding claim 21, the protruding portion is an annular projection with a bead (80) at its upper end. The external lid has a plurality of detents (102, Figure 4, column 5, lines 42-52) to engage the bead.

19. Claims 1, 4, 5, 9, 12, 14, 16 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by O'Brien (2,327,447).

20. Regarding claim 1, O'Brien discloses a pail assembly with a pail (10, page 1, right column), a container for a second product (14), a lid assembly (2, 12, in combination) with a receptacle to contain and support the container and a closure member to enclose the first product (4) and a lid for closing the container in the receptacle (20).

21. Regarding claim 4, the container for the second product is a pail with a lid.

22. Regarding claim 5, the pail and lid assembly are metal.

23. Regarding claim 9 O'Brien discloses a pail (10) a container (14), a means for closing the pail that is a lid and includes a receptacle (2, 12) and a means for closing the container in the receptacle (20).

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24. Regarding claims 12 and 14, the pail and the means for closing the pail are metal.

25. Regarding claim 16, O'Brien discloses a lid assembly (2, 12, in combination) with a first planar portion (6), an outer flange portion (4) that extends in first direction at some angle and the flange portion has a means of attaching to the pail, a receptacle (12) formed in the first direction below the planar portion, a protruding portion (8) extending upward from the planar portion and an external lid (20) with means (21) for attaching the lid to the protruding portion. The examiner considers the term "molded" to be a broad term that constitutes a product by process limitation that does not materially affect structure.

26. Regarding claim 17, the lid assembly is metal.

Claim Rejections - 35 USC § 103

27. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

28. Claims 1, 5, 9, 12 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burdick (2,074,639) in view of Barnes or DeCola.

29. Regarding claim 1, Burdick discloses a pail assembly with a pail (10, Figures 1-2), a lid assembly (11) with a receptacle capable of containing and supporting a

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container and a closure member to enclose the first product (14) and a lid for closing the container in the receptacle (12).

30. Burdick does not teach the use of a container placed in the receptacle. Both Barnes and DeCola disclose a similar assembly with a separate container placed in the receptacle. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a container for placement in the receptacle as disclosed by Barnes or DeCola in the pail assembly disclosed by Burdick to enable easier removal of the contents of the receptacle from the pail assembly without requiring removal of the lid assembly.

31. Regarding claim 5, Burdick discloses the pail and lid assembly are metal (page 1, left column, lines 48-50).

32. Regarding claim 9, Burdick discloses a pail (10), a means for closing the pail that is a lid and includes a receptacle (11) and a means for closing a container in the receptacle (12).

33. Burdick does not teach the use of a container placed in the receptacle. Both Barnes and DeCola disclose a similar assembly with a separate container placed in the receptacle. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a container for placement in the receptacle as disclosed by Barnes or DeCola in the pail assembly disclosed by Burdick to enable easier removal of the contents of the receptacle from the pail assembly without requiring removal of the lid assembly.

34. Regarding claims 12 and 14, Burdick discloses the pail and the means for closing the pail are metal (page 1, left column, lines 48-50).

35. Claims 1-3, 6 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wanderer in view of Barnes or DeCola.

36. Regarding claim 1, Wanderer discloses a pail assembly with a pail (12, Figures 1-4), a lid assembly (14) with a receptacle capable of containing and supporting a container and a closure member to enclose the first product (48) and a lid for closing the container in the receptacle (16).

37. Wanderer does not teach the use of a container placed in the receptacle. Both Barnes and DeCola disclose a similar assembly with a separate container placed in the receptacle. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a container for placement in the receptacle as disclosed by Barnes or DeCola in the pail assembly disclosed by Wanderer to enable easier removal of the contents of the receptacle from the pail assembly without requiring removal of the lid assembly.

38. Regarding claims 2 and 6, Wanderer discloses the pail assembly is plastic (column 2, lines 27-31). The examiner considers the term "injection molded" to constitute a product by process limitation that does not materially affect structure.

39. Regarding claim 3, Wanderer discloses a lid assembly (14, Figure 1) with a first planar portion (68, Figure 3), an outer flange portion (52) that extends in first direction at an angle and the flange portion has a means of attaching to the pail (12) in through the groove (48) formed by the flange and the inner groove wall, a receptacle formed in the

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first direction below the planar portion, a protruding portion extending upward from the planar portion (70, 72, 76, 78, 80, Figure 30) and an external lid (16) with means (66) for attaching the lid to the protruding portion.

40. Regarding claim 8, Wanderer discloses the outer flanged portion is flared outward (Figures 3 and 4).


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Harry A. Grosso whose telephone number is 571-272-4539. The examiner can normally be reached on Monday through Thursday from 7am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Anthony Stashick
Supervisory Patent Examiner
Art Unit 3781

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